



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

August 2, 2017

To:

Hon. Mary Kay Wagner
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Michael D. Graveley
District Attorney
Molinaro Bldg.
912 56th Street
Kenosha, WI 53140-3747

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Andrew Hinkel
Assistant State Public Defender
P. O. Box 7862
Madison, WI 53707-7862

Dexter Tolefree
5802 19th Avenue
Kenosha, WI 53140

You are hereby notified that the Court has entered the following opinion and order:

2015AP2081-CRNM State of Wisconsin v. Dexter Tolefree (L.C. #2010CF767)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Dexter Tolefree appeals from a circuit court order denying his WIS. STAT. § 973.155 (2015-16)¹ motion seeking sentence credit. Tolefree's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Tolefree received a copy of the report and was advised of his right to file a response. He has not done so.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses whether the circuit court erred in denying Tolefree's sentence credit motion. We agree with appellate counsel that this issue does not have arguable merit for appeal.

In May 2013, while Tolefree was on extended supervision for a 2011 Wisconsin conviction for possession of heroin with intent to deliver as a repeat offender and as a second or subsequent drug offense (the case before us), Tolefree committed a crime in Illinois (possession of heroin). The Wisconsin Department of Corrections placed an extended supervision hold on Tolefree. Tolefree was sentenced in Illinois in August 2013, and the Illinois court ordered its sentence to run concurrent to the sentence in the case before us in this appeal. In October 2014, after he finished serving his Illinois sentence, Tolefree's extended supervision was revoked, and he was reconfined on his Wisconsin sentence.

Tolefree sought sentence credit for the time he was in custody in Illinois because he was also under a Wisconsin extended supervision hold. Tolefree received Wisconsin sentence credit for the period covered by the extended supervision hold until he was sentenced in Illinois. However, the circuit court denied Tolefree sentence credit for time he spent serving his Illinois sentence because Tolefree's extended supervision was not revoked and he was not reconfined on his Wisconsin sentence until after he completed his Illinois sentence. In other words, the concurrent Wisconsin sentence anticipated by the Illinois court was not imposed until after Tolefree completed his Illinois sentence.

We agree with the circuit court that sentence credit for the Illinois sentence was not warranted. A sentence cannot be concurrent to a sentence not yet in existence. *State v. Morricks*, 147 Wis. 2d 185, 188, 432 N.W.2d 654 (Ct. App. 1988). Because Tolefree was not subject to a concurrent Wisconsin reconfinement period while he was serving his Illinois sentence, he was not entitled to sentence credit.

We further conclude that Tolefree was not entitled to sentence credit for his Illinois sentence because his Illinois sentence was not served in connection with the course of conduct for which his Wisconsin reconfinement period was later imposed. *State v. Carter*, 2010 WI 77, ¶¶13 n.7, 17, 327 Wis. 2d 1, 785 N.W.2d 516.

In addition to the issues discussed above, we have independently reviewed the record relating to the sentence credit claim, the only issue before this court on appeal. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the order and relieve Attorney Andrew Hinkel of further representation of Tolefree in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Andrew Hinkel is relieved of further representation of Dexter Tolefree in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals